

NEW DURHAM ZONING BOARD OF ADJUSTMENT
New Durham Town Hall June
11, 2019, 7:00p.m.

Present

Terry Jarvis, Chair
Stephanie Richard, Member
Art Hoover, Member
Linda Callaway, Member
Paul Raslavicus, Alternate Member

Excused Absence

Wendy Anderson, Vice Chair
David Wessel, Alternate Member

Also Present

Laura Zuzgo, Administrative Assistant	Tom Varney, Varney Engineering
Paula Mason, Applicant	Alan Wysocki, Applicant
Keith Gibbons, Abutter to Wysocki	Ann Gibbons, Abutter to Wysocki
Lea Simard, Abutter to Mason	John Simard, Abutter to Mason

Call to Order

Chair Jarvis called the meeting to order at 7:01pm.

Continued Review and Acceptance of Case # 2019-002

Thomas Varney, Varney Engineering LLC, representing the Paula J. Mason Revocable Trust, Paula J. Mason, Trustee is requesting variances from:

Article V, Section D: Set-backs- No new building shall be less than twenty (20) feet from the road frontage property line of any road or fifteen (15) feet from the property line of an abutter;

Article VI Section C- General Requirements 3.a. No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed: i. less than one hundred twenty five (125) feet from the edge of a public water body; or, ii. less than seventy five (75) feet from any well, or from a dwelling other than to which it is appurtenant. 3.b. No part of a leach field shall be located less than: i. twenty (20) feet from a property line on a lot less than 80,000 square feet; ii. less than thirty (30) feet from a property line on an eighty thousand (80,000) square feet to one hundred fifty thousand (150,000) square feet lot; or, iii. less than forty (40) feet from a property line on a one hundred fifty thousand (150,000) square feet lot;

Article XIV, Section C - Dimensional Requirements 1. Development with Waterfront Access; E. Lot Coverage: Buildings shall not cover more than 15% of the area of a lot. No more than a total of 20% of the lot area, including buildings, shall be covered by impervious surfaces;

Article XXI Section C - New Buildings and Structures: Alteration and Expansion of Existing Non-Conforming Uses All non-conforming property may be used for new construction of buildings and/or structures (including septic and leach fields) and any non-conforming building may be altered and expanded provided: 1. They conform to Non-Conforming Setback and height requirements below; and, 2. Such expansion does not make any existing lot, structure, or use more nonconforming within the terms of this Ordinance.

Article XXI Section G Non-Conforming Setbacks The following setbacks are required for Non-Conforming buildings, land and uses addressed by this Article 2. Buildings: c. The total square footage of all buildings shall not exceed more than fifteen (15) percent of the area of a lot. d. No more than a total of twenty (20) per cent of the lot area shall be covered by all impervious surfaces. e. No new building shall be less than fifteen (15) feet from the property line of an abutter or less than thirty (30) feet from an abutter's building.

The property is located at Map 118 Lot 011 – 354 Merrymeeting Road. If the application is deemed to be complete a Public Hearing may be held.

Chair Jarvis appointed Mr. Raslavicus to sit on the board in Ms. Anderson's absence. Mr. Raslavicus stated he and Mr. Varney have professional dealings with each other with another lot where he is a trustee but no conflict of interest was indicated. No conflict of interest or perceived conflict of interest was indicated by other members of the board.

Chair Jarvis stated this case was originally received and determined to be incomplete on April 22, 2019; at the May 14, 2019 meeting, the application was still incomplete, additional information was received as requested by the Board. The Board reviewed the application for completeness.

Mr. Hoover made a motion to accept the application as complete. Mr. Raslavicus seconded the motion. Motion passed 5-0-0.

Chair Jarvis confirmed the original public hearing notice was posted as required.

Tom Varney, Varney Engineering, stated the plans are to demolish the existing structure and replace it on mostly the same footprint, but adding an additional 196 square feet; a new septic system and well will be installed as well as storm water management systems. He stated the lot size coverage will increase from 23.6% to 26.8% and the building size will increase from 16.4 to 20.3%. The Board reviewed the pictures of the existing building along with maps and plans of the proposed building. Mr. Varney explained the lot lines and where the septic and well would be located. It was noted the septic could not

be located behind the cottage as it needs to be buried. The Board discussed the proposed plans of the building and property. It was noted the driveway would remain asphalt. Mr. Varney explained the driveway is too steep to remove it. There was further discussion of the details of the proposed building.

John Simard, resident/abutter, stated his concern is the septic tank being close to his well (less than 75'); he is also concerned about the size of the leech field and how far it will be from the well. Mr. Simard suggested placing the tank behind the house so it can be as far away from all the wells as possible. The Board reviewed and discussed the proposed placements as well as alternative placements. Mr. Varney suggested it may not be the best choice, noting how deep it would be to get to the tank.

Mr. Simard stated he knows what the excavation is going to be like and suggested that this would be the time to get the tank in to get the tank as far away from all wells as possible.

Mr. Simard asked if there is any data about the likelihood of septic tank failure. Chair Jarvis referred him to the NH Department of Environmental Services.

It was discussed about there being a right-of-way but Chair Jarvis noted there is no recorded right-of-way between these lots.

Chair Jarvis closed the public hearing at 8:01pm.

Chair Jarvis stated the members of the Board who will deliberate on this case are Ms. Richard, Ms. Callaway, Mr. Hoover, Mr. Raslavicus and Chair Jarvis.

The Board agreed to combine similar requests.

Chair Jarvis outlined the following findings of fact:

The impervious surface will go from 23.6% to 26.8%; the building size will go from 16.4% to 20.3%; the septic tank distance from the water will go from 120' to 107'; the septic system from the wells on the left will from 24' to 62'; on the right from 50' to 25'; the septic system from the dwelling will continue to be approximately 25'; the leech field from the dwelling will be approximately 32' and 72'; the new house will be 196' larger and one floor; the current dirt basement will be concrete; it will be used for utilities only and not a finished basement; 2/3s of the property has slopes between 25 and 30%; one slope is 15%; the applicant will be required to get a conditional use permit due to steep slopes and will also be required to get a DES septic permit; there is currently a holding tank of 300 gallons and will have a new DES approved septic system with an approximate capacity of 1250 gallons; there will be no garage but there will be a carport;

the patio will be pervious but the driveway, stairs and walkway will be impervious; there are currently two bedrooms and it will continue to have two bedrooms.

Discussion: Article V, Section D; Article XXI, Section G.2.E

Granting the variance would or would not be contrary to the public interest: The Board agreed it would not be contrary as its basically the same setbacks. Chair Jarvis noted the lot is so small its hard to be within the setbacks.

The spirit of the ordinance would or would not be observed: The Board agreed the spirit is being observed and the reason for building off the existing footprint is to square off the building and add one small room in the back which will remain within the setback from the water.

Granting the variance would or would not do substantial justice: Chair Jarvis suggested it would do substantial justice; the lots are difficult to do anything.

The values of the surrounding properties would be diminished: Chair Jarvis suggested the property would be improved and in return improve the values of the neighborhood.

Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is or is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application to this property: Chair Jarvis stated if they deny the variance it would result in an unnecessary hardship. The building is being improved.

Chair Jarvis made a motion to approve the request for variance to Article V, Section D and Article XXI, Section G.2.E with the following conditions: a conditional use permit must be received from the New Durham Planning Board and comply with any conditions the Planning Board sets on the conditional use permit; a DES septic system permit must be received; the basement is not to become living space and remain unfinished; the carport is not to be enclosed. Ms. Richard seconded the motion. Motion passed, 5-0-0.

Discussion: Article XIV, Section C.1.E, and Article XXI, G.2.C

Granting the variance would or would not be contrary to the public interest: The Board concurred it would not be contrary to the public interest as it will be improving the property. Mr. Hoover stated when they have an opportunity to improve a septic system, it's in the public interest.

The spirit of the ordinance would or would not be observed: The Board agreed it would be improving the lot; replacing an unknown septic system; the Planning Board will be monitoring the project due to steep slopes. Mr. Raslavicus stated it bothers him to grant a variance which is a convenience issue and allowing additional space and suggesting a

building be rebuilt within the original footprint. Chair Jarvis suggested what is being added to the rear of the building in improvements outweighs the 196' being added. Ms. Callaway noted this proposed building will be remaining within the setbacks from the water.

Granting the variance would or would not do substantial justice: The Board concurred granting the variance would do substantial justice as the property will be improved; the septic system improved; setbacks will not be encroached any more than currently and the steep slopes will be monitored in perpetuity.

The values of the surrounding properties would be diminished: The Board concurred the values of the surrounding properties would not be diminished.

Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is or is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application to this property: The Board concurred the size of the lot limits what can be done with the property.

Chair Jarvis made a motion to grant the variance request to Article XIV, Section C.1.E, and Article XXI, G.2.C with the same conditions as given in the previous variance approval. Mr. Hoover seconded the motion. Motion passed, 5-0-0.

Discussion: Article VI, Section C.3.A and C.3.B

Granting the variance would or would not be contrary to the public interest: Chair Jarvis suggested that granting the variance would be contrary to the public interest due to the proximity to surrounding wells and there is another possible location for the septic tank to move it further from the wells. Mr. Raslavicus stated he believes it would be in the public interest as the septic tanks and leach fields are well designed and monitored by NH DES. Ms. Richard and Ms. Callaway agreed in using an alternative location for the leach field.

The spirit of the ordinance would or would not be observed: Mr. Hoover stated the proposed plans and new septic system would be a big improvement on the property. Chair Jarvis stated she agrees it improves the property but doesn't believe it does substantial justice to the abutters. The Board discussed the requirement of DES permit approval but it's unclear what the details considered by DES were. Mr. Raslavicus suggested a different location be presented to DES to determine the best location. The Board discussed the various options for the location as well as possible conditions to ensure the system is pumped or maintained.

Granting the variance would or would not do substantial justice: Chair Jarvis stated granting the variance would do substantial justice. Due to the size of the lot there is no other solution as to where the house could be placed.

The values of the surrounding properties would be diminished: The Board agreed the property is going to be improved but the encroachment on other properties may affect future sales due to the well and septic proximity. The property to the right may be diminished as the septic will be closer while the property on the left may improve as the septic will be further.

Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is or is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application to this property: It was noted the lot is too small to comply with all the standards; the abutting properties are already developed as well.

Mr. Hoover made a motion to grant the variance to request to Article VI, Section C.3.A and C.3.B be approved. Ms. Richard seconded the motion.

Ms. Richard made a motion to amend the previous motion to include the conditions included in prior motions. Mr. Raslavicus seconded the amendment. Amendment passed, 5-0-0.

Motion passed, 4-1-0, with Chair Jarvis opposed.

Discussion: Article XXI, Section C.1 and C2

Granting the variance would or would not be contrary to the public interest: The Board concurred it would not be contrary to the public interest.

The spirit of the ordinance would or would not be observed: The Board concurred the spirit of the ordinance would be observed for reasons previously discussed.

Granting the variance would or would not do substantial justice: The Board concurred that granting the variance would do substantial justice for reasons previously discussed.

The values of the surrounding properties would be diminished: The Board concurred the values of surrounding properties would not be diminished.

Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because there is or is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application to this property: The Board concurred there is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application to this property.

Ms. Richard made a motion to approve the variance request to Article XXI, Section C.1 and C.2 with the conditions that were included in the previous motions. Mr. Hoover seconded the motion. Motion passed, 5-0-0.

Mr. Hoover excused himself from the meeting.

Review and Acceptance of Case # 2019-004

Thomas Varney, Varney Engineering LLC, representing Alan H. Wysocki's requesting variances from: *Article VI Section C.3.a and b. General Requirements.3. Sewage Disposal and Leach field Setbacks a. No privy, cesspool, septic tank, or sewage disposal area shall be constructed or reconstructed: i. less than one hundred twenty five (125) feet from the edge of a public water body; or, ii. less than seventy five (75) feet from any well, or from a dwelling other than to which it is appurtenant. b. No part of a leach field shall be located less than: i. twenty (20) feet from a property line on a lot less than 80,000 square feet; ii. less than thirty (30) feet from a property line on an eighty thousand (80,000) square feet to one hundred fifty thousand (150,000) square feet lot; or, iii. less than forty (40) feet from a property line on a one hundred fifty thousand (150,000) square feet lot. Article XIV Section C. 1.b.and c: Dimensional Requirements 1. Development with Waterfront Access b. Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) feet from the normal high water level. c. Leach Field Setback: Any leach field shall be set back a minimum of 125 feet from the normal high water level. The Planning Board may require greater setback where more than one dwelling unit uses common sewage disposal facilities. Article XXI Section C.1 and2. C. - New Buildings and Structures; Alteration and Expansion of Existing Non-Conforming Uses1. They conform to Non-Conforming Setback and height requirements below; and, 2. Such expansion does not make any existing lot, structure, or use more non-conforming within the terms of this Ordinance. Article XXI Section G (2)(b) G. - Non-Conforming Setbacks. Buildings 2. Buildings: b. No new building, except for water related structures, shall be located in a flood hazard area, or less than seventy feet (75) feet from any water body or river course.*

The property in question is located on Pine Point Road, Map 103, Lot 014.

If the application is deemed to be complete a Public Hearing may be held.

Mr. Hoover stated he may have a conflict and explained he represented an abutter many years ago whose case may have affected the applicants. Mr. Raslavicus stated he has the same conflict as previously disclosed. The applicant and Mr. Varney indicated no problem with Mr. Hoover and Mr. Raslavicus hearing the case.

Chair Jarvis asked if this lot is a buildable lot. It was noted the lot is non-conforming and Ms. Zuzgo researched the file but no clear indication was found. It was noted the property was reviewed in 1998 for a septic system but no evidence of variances or permits was found. Mr. Hoover noted the lot is not serviced by a Town road at this point.

New Durham Zoning Board of Adjustment
June 11, 2019 APPROVED

Mr. Varney stated there are septic approvals which mean it's a buildable lot. He stated they also have access from Pine Point Road up to Kings Highway. Chair Jarvis noted Pine Point Road was not accepted by the Town and voted against by the legislative body to do so; she explained she didn't find any written permission from Mr. McKay within the file or deeds for them to use the road. There was further discussion of the use of a private road by the property owners as well as legal issues which had come up over the years.

Mr. Gibbons, 168 Pine Point Road, abutter, explained Mr. McKay had to provide access to all the camps on the road by at least one way and when they went to court, permission was granted to go over the pit and this was put into the deeds.

The Board concurred the road issue is not in the purview of the ZBA but legal counsel will be needed to go forward. The Board concurred the application is incomplete as they don't have clear direction whether the road has a right of passage. The Board is only able to make decisions on properties on roads built to town standards/Class V roads. Ms. Zuzgo confirmed she researched back to 1957 and there is no mention of a right-of-way; the Board suggested the applicant research to find where permission is granted.

Chair Jarvis made a motion that the application for Case 2019-004 is incomplete as there is no information regarding road ownership and right of passage; there may be a possibility of a variance being required to Article V, Section C. Mr. Raslavicus seconded the motion. Motion passed, 5-0-0.

Chair Jarvis stated Case 2019-004 is continued to the next meeting, July 9, 2019.

Approval of Minutes

Meeting of May 14, 2019. Edits were made. **Chair Jarvis made a motion to approve the minutes as amended. Mr. Raslavicus seconded the motion. Motion passed, 4-0-1.** Ms. Richard abstained.

Revised Procedures

A draft copy of proposed edits for the Rules and Procedures was reviewed and discussed. Chair Jarvis will forward questions to legal counsel and bring back a draft with the edits discussed.

Next Meeting

July 9, 2019, 7:00pm, New Durham Town Hall

Adjourn

Ms. Richard made a motion to adjourn. Mr. Raslavicus seconded the motion. Motion passed, 5-0-0.

New Durham Zoning Board of Adjustment
June 11, 2019 APPROVED

The meeting was adjourned at 10:01pm.

Respectfully Submitted,

Jennifer Riel, Recording Secretary